48

HIGH COURT OF CHHATTISGARH AT BILASPUR
M.A. No. 248/2004

APPELLANT Saheb Das

Versus

RESPONDENTS Shiv Prasad and others

Judgment post for 10-7-2007

Sd/-
Dhirendra Mishra
Judge

HIGH COURT OF CHHATTISGARH AT BILASPUR
M.A. No. 248/2004

APPELLANTS NON-APPLICANTS	Saheb Das, S/o. Chaituram Satnami, 22 years, R/o vill. Bhainsbod, Khurd, Police Out Post – Dadi, Police Station Navagarh, Distt. Durg (C.G.)

Versus

RESPONDENT	1. Shiv Prasad, S/o. Shatruhan Satnami, aged 21 years
	2. Fal Kumar, S/o Fagulal Satnami, aged 35 years
	3. Sanat, S/o Samaru Satnami, aged 19 years
	4. Narayan, S/o Jagannath Tondon, 18 years
	All R/o Vill. Kumhi, Tah. & P.S. Berla, Distt. Durg.
NON-APPLICANTS No. 2	5. The United Insurance Company, (The United India Insurance Co. Ltd.) Rajnandgaon, Distt. Rajnanadgaon (C.G.)

Shri Prafull Bharat, counsel for the appellant.
Shri P.P. Sahu, Counsel for the respondents No. 2, 3 and 4.
Shri Pankaj Agrawal, counsel for the respondent No. 5.
None appears for respondent No. 1.

J U D G M E N T

Dhirendra Mishra, J.

The appellant has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short, hereinafter referred to as the Act) against the award dated 20-9-2003 passed by the Additional Motor Accident Claims Tribunal, Bemetara, Durg in Claim Case No. 22/2003 whereby the respondents No. 1 to 4 have been awarded compensation for the injuries sustained by them in a motor vehicle accident involving tractor and trolley

owned and driven by the appellant and insured by the respondent No. 5 for the relevant period.

At the outset, learned counsel for the appellant does not press the appeal against the respondents No. 1 to 3 in view of Section 173 (2) of the Act as the Tribunal has awarded only Rs. 600/- to each of them. The Tribunal has awarded a sum of Rs. 65,516/- to the respondent No. 4 with interest at the rate of 9% per annum from the date of application i.e. 4-4-2003, respondent No. 5 has been exonerated from satisfying the award on the ground that the driver of the tractor trolley did not have valid and effective driving licence at the time of accident.

The grounds urged by learned counsel for the appellant is that excessive compensation has been awarded to the respondent No. 4 towards loss in earning and secondly that the Tribunal has committed illegality in exonerating the Insurance Company from the liability of satisfying the award as from the evidence available on record, it is evident that the appellant was having learners licence and his father Chaituram who was also sitting beside the appellant at the time of accident was having valid driving licence. From the evidence available on record, it would be evident that respondent No. 5- Insurer has failed to establish that the appellant was not having valid and effective driving licence and has not discharged its burden.

On the other hand, learned counsel for the respondent No. 5 argued that admittedly the appellant was having learners licence Ex. D-1 that too to drive light motor vehicle whereas at the time of accident, the tractor was fitted with a trailer which was being used for transport and the appellant did not have the valid and effective driving licence to drive transport vehicle. Though appellant Saheb Das and his father Chaituram have claimed that at the time of accident, Saheb Das was driving tractor and, Chaituram who had valid driving licence was sitting beside Saheb Das but even the driving licence of Chaituram has

not been produced and proved. Reliance is placed on the judgment in the matter of ***National Insurance Co. Ltd. -v- Kusum Rai and others*** reported in ***2006 ACJ 1336***.

I have heard the learned counsel for the parties.

So far as the argument that the award is too excessive, the Tribunal considering the fact that respondent No. 4 Narayan was admitted in the Bhilai Hospital for a period of more than 45 days and further considering that he had submitted medical bills for a sum of Rs. 35,016.07 towards the expenditure on his treatment and looking to the nature of injuries, a sum of Rs. 10,000/- has been awarded, for loss of earning for 7 months, Rs. 10,500/- has been awarded, for physical and mental agony, a sum of Rs. 10,000/- has been awarded, thus a total sum of Rs. 65,516/- has been awarded with interest at the rate of 9% per annum from the date of accident i.e. 4-4-2003. Thus, considering the evidence available on record, the nature of injuries sustained by him and duration of hospitalization, the awarded sum appears to be reasonable and not excessive as claimed by the appellant.

Now coming to the second question whether the Tribunal was justified in exonerating the respondent No. 5 from the liability of satisfying the award, from the driving licence of Ex. D-1 which has been filed and proved by the appellant himself, it is evident that the appellant had learners licence for driving light motor vehicle only. It is also not in dispute that at the time of accident the trailer was attached to the offending tractor and claimants were traveling on trolley as labourers for unloading flag stone loaded in the trolley. The Insurance policy of Ex. P-7 is issued under farmer's package policy as agricultural tractor and the policy does not contain the details of the trailer though there is no dispute that at the time of accident, the trailer was attached with the tractor. In the matter of ***Kusum Rai*** (supra), the driver of the offending jeep was holding driving licence to

52

drive light motor vehicle whereas at the time of accident, the vehicle was being used as a taxi and, therefore, it was a commercial vehicle, in these circumstances, the Hon'ble Supreme Court has held that since the driver had driving licence to drive only light motor vehicle and at the time of the accident, the jeep was being used as a taxi and, therefore, the driver of the vehicle did not possess the driving licence of the category of vehicle which he was driving at the relevant time and, as such, the insurance company was not responsible for satisfying the award. In the instant case also, the driver was having only learning licence of light motor vehicle though it has been claimed that his father Chaituram was sitting beside him who was having valid driving licence, however the licence of Chaituram has not been produced nor proved by the appellant. Even otherwise, the appellant was holding only licence to drive light motor vehicle but admittedly the tractor was fitted with a trolley which was loaded with flag stones and the vehicle was being used as a goods carriage vehicle and thus from the evidence available on record, it is established that the appellant was not holding valid and effective driving licence to drive the tractor and trolley at the relevant time.

Thus, relying upon the judgment in ***Kusum Rai's*** (supra) case, we do not find any infirmity or illegality in the impugned award whereby the respondent No. 5 has been exonerated from the liability of satisfying the impugned award. The appeal is devoid of substance and the same deserves to be dismissed and is hereby dismissed.

Sd/-
Dhirendra Mishra
Judge

8/-